

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
SPRINT SPECTRUM, L.P.	)	WC Docket Nos. 03-109, 07-138
	)	
Petition for Declaratory Ruling	)	

**REPLY COMMENTS OF SPRINT SPECTRUM, L.P.**

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## **Summary**

Section 54.403(b) of the FCC's Rules states that Lifeline discounts apply only to an ETC's lowest-price residential calling plan. Any other reading, such as the one proposed by the KCC, would result in an internally inconsistent statutory requirement, and would impose differing and unreasonably discriminatory standards on incumbent and competitive ETCs. Therefore, logic, competitive equity, and the Commission's administrative requirements lead inexorably to the conclusion that existing FCC regulations require that Lifeline discounts be applied only to an ETC's lowest-priced generally available residential rate plan, whether such plan is offered pursuant to tariff or to contract. Sprint Spectrum accordingly urges the FCC to grant its petition for declaratory ruling.

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Sprint Nextel Corporation, on behalf of its wholly-owned subsidiary Sprint Spectrum, L.P. (Sprint Spectrum), hereby respectfully submits its reply to comments filed in response to its petition for declaratory ruling in the above-captioned proceedings. The record in this proceeding demonstrates the need for prompt action by the Federal Communications Commission (FCC or Commission) to clarify its rule regarding application of the Lifeline discount, 47 C.F.R. § 54.403(b). To be sure, Sprint Spectrum has no desire to discourage qualified low-income consumers from subscribing to its competitive Lifeline service offering, but simply seeks the Commission's clarification regarding the plain language of its rule. To that end, Sprint Spectrum believes that logic and competitive equity lead to the conclusion that Lifeline discounts must be applied to an eligible telecommunications carrier's (ETC) lowest-cost generally available residential rate plan as set forth in Section 54.403(b) – whether that rate plan is provided pursuant to a filed tariff or by individual contract. Sprint Nextel therefore respectfully requests that the Commission reiterate (and thereby clarify) this conclusion by preempting the Kansas Corporation Commission's (KCC) recent inconsistent ruling on this issue.

## I. BACKGROUND AND INTRODUCTION.

On October 2, 2006, the KCC issued an order<sup>1</sup> requiring ETCs to apply Lifeline discounts to any rate plan offered by the ETC that was selected by a Lifeline-eligible consumer. In a subsequent District Court proceeding, both the KCC and Sprint Spectrum agreed that the question of whether this KCC Lifeline rule was consistent with the federal Lifeline rule should be referred to the FCC. Therefore, in June, 2007, Sprint Spectrum requested that the FCC issue a declaratory ruling that the *KCC Order* violates 47 U.S.C. § 254(f) of the Act and Section 54.403(b) of the FCC's rules.<sup>2</sup> Sprint Spectrum further requested a declaratory ruling that the *KCC Order*, by regulating the rates charged by wireless carriers, violates 47 U.S.C. § 332(c)(3)(A).

Section 54.403(b) states that ETCs “shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in Section 54.101(a)(1) through (a)(9)...” (emphasis added). Sprint Spectrum believes that this rule unequivocally requires all ETCs to apply the Lifeline discounts to their lowest-cost generally available residential rate plan. For ETCs subject to state or federal tariff requirements, that would be their lowest-priced “tariffed” residential plan; and for ETCs exempt from such tariff requirements (*e.g.*, wireless carriers), that would be their lowest-priced “generally available” residential rate plan. Thus, the KCC requirement that

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<sup>1</sup> *Order Adopting Requirements for Designation of Eligible Telecommunications Carriers*, Docket No. 06-GIMT-446-GIT, paragraphs 66 and 77 (“*KCC Order*”).

<sup>2</sup> *Petition for Declaratory Ruling* filed by Sprint Spectrum, L.P., on June 8, 2007. The FCC requested comments on this petition in a Public Notice dated July 10, 2007 (DA 07-2978).

Lifeline discounts be applied to *any* of an ETC's residential service offerings regardless of features or price -- as opposed to the carrier's lowest-priced residential rate for the services supported by the federal universal service fund (*i.e.*, the services enumerated in Section 54.101(a)(1) through (a)(9)) -- conflicts with Section 54.403(b) and violates Section 254(f) of the Act, which allows states to adopt only "...regulations not inconsistent with the Commission's rules to preserve and advance universal service."<sup>3</sup> Moreover, by requiring that wireless ETCs discount the rate for any service plan without the ability to lawfully seek reimbursement from the federal USF for the Lifeline discount provided, the *KCC Order* also violates Section 332(c)(3)(A) ("...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...").<sup>4</sup>

None of the comments filed in this proceeding supports a legal interpretation different from the one described by Sprint Spectrum in its Petition. Indeed, to accept the rationale of parties advocating mandatory application of the Lifeline discount to any service plan offered by a wireless ETC would be to endorse differing standards for incumbent and competitive ETCs, in violation of the Commission's key universal service principle of competitive neutrality. Because it appears that other jurisdictions currently do or are planning to implement Lifeline discount requirements similar to the one adopted by the KCC,<sup>5</sup> the FCC must promptly clarify the plain language of its rule

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<sup>3</sup> 47 U.S.C. § 254(f).

<sup>4</sup> 47 U.S.C. § 332(c)(3)(A).

<sup>5</sup> *See, e.g.*, Comments of the California Public Utilities Commission and the People of the State of California, p. 3.

relating to application of Lifeline discounts, and the relationship between the federal rule and any conflicting state rule.

**II. ADOPTION OF THE KCC'S INTERPRETATION OF THE FEDERAL LIFELINE RULE WOULD RESULT IN DIFFERENT, UNREASONABLY DISCRIMINATORY STANDARDS FOR INCUMBENT AND COMPETITIVE ETCs.**

Assuming *arguendo* that the KCC's interpretation of Section 54.403(b) is even logical, it still cannot stand because it results in differential treatment of incumbent and competitive ETCs. The KCC has interpreted Section 54.403(b) of the FCC's rules as "requiring Lifeline support to be applied to the lowest tariffed or otherwise generally available rate plan"; that is, that the Lifeline discount applies either to the lowest tariffed rate, or to any otherwise generally available rate (KCC comments, p. 5). Thus, if the ETC has a tariff, the Lifeline discount applies only to its lowest rate; but, if the carrier has no tariff, the Lifeline discount applies to any available rate. If this interpretation were correct, it would constitute unreasonable discrimination by requiring competitive ETCs (CETCs) to make Lifeline available on every rate plan, while obliging incumbent ETCs to apply the Lifeline discount only to their lowest tariffed residential calling plan.<sup>6</sup> The imposition of a broader requirement on CETCs that provide service pursuant to contract than is imposed upon incumbent ETCs that provide service pursuant to tariff is a clear violation of the key universal service principle of competitive neutrality. As Alltel points

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<sup>6</sup> Alternatively, if the KCC does not construe Section 54.403(b) as establishing separate requirements for tariffed and non-tariffed carriers, then the phrase "lowest tariffed" is rendered meaningless. If the rule was intended to require all ETCs to apply the Lifeline discounts to any rate plan, the Commission would not have said "lowest tariffed," but would have instead adopted a rule that requires carriers to apply the Lifeline discounts "to reduce the cost of any generally available residential rate for the services enumerated in § 54.101(a)(1) through (a)(9) and charge Lifeline customers the resulting amount."

out in its comments, such “discrimination against those service providers who are not subject to the tariffing jurisdiction...” is contrary to Congressional intent and explicit FCC policy.<sup>7</sup>

The bifurcated interpretation of Section 54.403(b) propounded by the KCC is at odds with the FCC’s intent in adopting this rule. In its first major universal service decision released after enactment of the Telecommunications Act of 1996, the FCC adopted competitive neutrality as a principle to guide its deliberations on universal service policies and regulations.<sup>8</sup> Over the next decade, the FCC issued numerous other USF-related decisions based in part on a competitive neutrality analysis,<sup>9</sup> and the Court of Appeals affirmed the relevance of the principle of competitive and technological neutrality in *Alenco Communications v. FCC*.<sup>10</sup> Interpreting Section 54.403(b) as imposing different, more onerous Lifeline requirements upon competitive ETCs than upon incumbent ETCs would up-end the key principle of competitive neutrality, and result in precisely the sort of outcome that this principle was designed to prevent.

The KCC’s interpretation of Section 54.403(b) also has troubling implications for Lifeline consumers who choose to subscribe to an incumbent ETC’s local measured

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<sup>7</sup> Comments of Alltel Corporation, p. 3.

<sup>8</sup> *Federal-State Joint Board on Universal Service First Report and Order*, 12 FCC Rcd 8776, 8801 (1997).

<sup>9</sup> For example, FCC decisions to establish ETC criteria, to grant specific ETC designation applications, and to base USF support to certain carriers on forward-looking costs, were made with an eye towards encouraging efficient and even-handed competition in high-cost areas.

<sup>10</sup> *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5<sup>th</sup> Cir. 2000) (the universal service program “must treat all market participants equally.... [T]his principle is made necessary not only by the economic realities of competitive markets but also by statute.”).



service plan.<sup>11</sup> On the one hand, the KCC expresses concern over the potential that wireless Lifeline customers might incur “costly overcharges” if they use more minutes than are available with the lowest-priced rate plan. However, on the other hand, the KCC’s interpretation of the Commission’s rule does not account for Lifeline customers of local measured service plans who may also incur “costly overage charges...when their level of local usage exceeds the minutes provided in the basic plan.”<sup>12</sup>

Sprint Spectrum does not doubt the sincerity of the KCC’s concern over ensuring that consumers have enough minutes (or calls) to meet their local calling needs without incurring overage charges. However, the KCC’s position here is nevertheless internally inconsistent. If overage charges are a concern, they are a concern no matter the identity of the local service provider. Thus, whenever the Lifeline tariffed service plan involves metered service, the KCC’s bifurcated interpretation of Section 54.403(b) cannot be reconciled with its concern about overage charges.

### **III. THE PURPOSE OF THE INSTANT PROCEEDING IS TO INTERPRET EXISTING RULES, NOT TO ADOPT NEW POLICIES INTENDED TO INCREASE PARTICIPATION IN THE LIFELINE PROGRAM.**

In support of their belief that the FCC’s rules allow application of the Lifeline discount to rate plans other than the carrier’s lowest-priced generally available rate, various commenting parties offer the following rationales: (1) that the FCC’s decision to allow ETCs to market vertical features to Lifeline customers is proof that the FCC has

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<sup>11</sup> While ILECs in Kansas generally have flat-rated local service plans, adoption of the KCC’s interpretation of the federal Lifeline rule would have a spill-over effect in other jurisdictions in which residential local measured service offerings are available.

<sup>12</sup> KCC, pp. 7-8. Although this comment was directed towards wireless service plans, the logic applies equally to a tariffed local measured service plan offered by a wireline ETC.

allowed carriers to apply the Lifeline discount to plans other than their lowest-cost plans;<sup>13</sup> (2) that restrictions on a Lifeline-eligible customer's choice of rate plans will discourage such customers from participating in the Lifeline program;<sup>14</sup> (3) that other ETCs offer Lifeline customers a choice of rate plans;<sup>15</sup> and (4) that customers whose choices are limited will complain about such limitations.<sup>16</sup>

First, Sprint Spectrum disagrees that the FCC's decision to allow ETCs to market vertical services to Lifeline customers is equivalent to an FCC decision to allow carriers to apply the Lifeline discount to plans other than their lowest-cost plan. As an initial matter, low-income universal service support may only be used to subsidize the cost of those services or functionalities supported by the federal high-cost universal service fund.<sup>17</sup> Vertical features are not included on this list, and therefore, the Lifeline discount may not be used towards the purchase of these vertical features – it may be applied only towards the consumer's basic supported services.

Second, the line of reasoning presented here (that because Lifeline customers can purchase vertical features, the Lifeline discount can be applied to rate plans other than the lowest priced plan) cannot be reconciled with the specific language in Section 54.403(b). Consider, for example, the least controversial situation – where a Lifeline customer subscribes to a tariffed residential service offered by the incumbent local exchange

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<sup>13</sup> See, e.g., KCC, p. 5; National Association of State Utility Consumer Advocates (NASUCA), p. 4, citing *Lifeline and Link Up Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 8302, 8330 (para. 53) (2004).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., NASUCA, p. 2; Florida Public Counsel (Florida), p. 3.

<sup>16</sup> See, e.g., Florida, p. 4.

<sup>17</sup> See 47 C.F.R. § 54.101(a)(1) - (a)(9).

carrier. The ILEC ETC may indeed sell vertical services to the Lifeline customer. However, consistent with Section 54.403(b) (and with the KCC's interpretation of this rule), the ILEC ETC must still apply the Lifeline discount only to its "lowest tariffed" rate plan; there is no exception for applying the discount to other, more expensive, tariffed rate plans offered in conjunction with vertical features. As discussed in Section II above, competitive parity demands a similar result for competitive ETCs. If a Lifeline customer chooses to subscribe to a vertical feature, the Lifeline discount still applies only to the basic supported service portion of his invoice, and only to the lowest priced plan.

Finally, Sprint Spectrum does not disagree with the other points raised by the KCC, NASUCA and Florida. It is certainly possible that some consumers who are not allowed to select higher-priced service plans may decide to select a different Lifeline service provider, or might in certain circumstances decide not to take advantage of Lifeline discounts at all -- that is, that freedom of choice is more valuable to them than is a \$13.50 monthly Lifeline discount. It may also be true that other ETCs are incorrectly applying Lifeline discounts to multiple service plans. And it is certainly true that some consumers will complain if they are not allowed to subscribe to a higher-priced service plan at a discounted rate. However, none of these factors is relevant to the legal analysis at issue here -- *i.e.*, the interpretation of the existing requirement in Section 54.403(b).<sup>18</sup> The FCC's Lifeline rule is unambiguous: the Lifeline discount must be applied to the ETC's lowest-priced generally available residential rate plan, whether offered pursuant

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<sup>18</sup> Policy arguments (*e.g.*, how to improve Lifeline participation rates) should be raised in the context of a rulemaking considering a wider application of Lifeline discounts, not in the context of a request for declaratory ruling.

to a filed tariff or pursuant to an individual contract. Any requirement to the contrary, such as the KCC Lifeline rule, is in conflict with the federal requirement and may not be imposed upon ETCs.

Sprint Spectrum is firmly committed to the Lifeline program and to the principle that consumers in all regions of the Nation should have access to high quality telecommunications services at just, reasonable and affordable rates. We have assigned dedicated personnel to handle Lifeline inquiries, process applications, and perform verification surveys; advertised the availability of the Lifeline program in local and national media; implemented training programs in our retail outlets to ensure that sales personnel are knowledgeable about Lifeline; and registered with the Universal Service Administrative Company (USAC) as a Lifeline provider in our designated ETC service areas.

Despite the best efforts of Sprint Spectrum and other ETCs to extend Lifeline benefits to all eligible consumers, parties must recognize that for a certain percentage of Lifeline-eligible consumers, the burdens of complying with program rules (applying for Lifeline services; demonstrating eligibility, both initially and during the annual renewal/certification process; accepting some limitations on service plan options and the “one Lifeline discount per household” rule, etc.) may be greater than the associated benefits, and that these consumers will therefore choose not to participate in the Lifeline program. However, program rules are necessary to prevent waste, fraud and abuse, and it would be irresponsible to ignore the plain language of the Commission’s rule based on the speculation that it may discourage program participation.

#### **IV. INCORRECT APPLICATION OF THE LIFELINE DISCOUNT JEOPARDIZES WIRELESS ETCs' ABILITY TO RECEIVE REIMBURSEMENT.**

The KCC states (pp. 8-9) that its Lifeline rule does not violate 47 U.S.C. §332(c)(3)(A) because ETCs may and do receive reimbursement from the federal USF for Lifeline discounts applied to any rate plan. The KCC was advised by USAC, the federal universal service fund administrator, that USAC does not require ETCs to report the type of service plan the qualifying Lifeline customer has selected and thus does not limit reimbursement to an ETC's lowest-cost plan. While it may be true that certain ETCs have sought reimbursement for discounts applied to high-cost rate plans, that does not make it lawful. This is particularly true considering that USAC apparently has no mechanism in place to ensure compliance with Section 54.403(b).

Sprint Spectrum acknowledges that ETCs are not required to report service plan information to USAC. However, the fact that USAC reimburses an ETC for all claimed Lifeline discounts is not dispositive of the meaning of the FCC's Lifeline rule and certainly is not proof that the Lifeline discount was meant to be applied to all rate plans offered by a wireless carrier. If an ETC has submitted Lifeline claims for discounts applied to any of its calling plans, and was reimbursed for all such claims, this is proof only that USAC did not consider the basis of the claim or the relevance of the type of calling plan.<sup>19</sup> It is *not* proof, however, that reimbursement for discounts on all plans is consistent with Section 54.403(b). In any event, USAC may not "make policy, interpret

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<sup>19</sup> Indeed, insofar as Sprint Spectrum is aware, prior to the adoption of the KCC Lifeline rule, the question of which plans are eligible for the Lifeline discount had never been posed to USAC, and USAC would have had no reason to even consider the matter.

unclear provisions of the statute or rules, or interpret the intent of Congress.”<sup>20</sup> This responsibility falls on the FCC, and Sprint Spectrum accordingly urges the FCC to issue the requested declaratory ruling in order to clarify the plain language of Section 54.403(b).

If, as Sprint Spectrum has requested, the FCC clarifies that the Lifeline discount must be applied only to an ETC’s lowest-priced generally available residential rate plan, it follows that USAC may reimburse carriers only on this basis. If the KCC nonetheless continues to require ETCs to apply the Lifeline discount to higher-cost rate plans, and USAC is not permitted to reimburse carriers for Lifeline discounts on anything other than their lowest-priced plan, the KCC would be engaging in impermissible rate regulation of commercial mobile radio service providers in violation of 47 U.S.C. § 332(c)(3)(A).

## **V. CONCLUSION.**

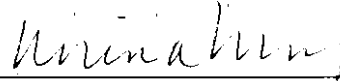
Section 54.403(b) states that Lifeline discounts apply only to an ETC’s lowest-price residential calling plan. Any other reading, such as the one proposed by the KCC, would result in an internally inconsistent statutory requirement. Therefore, logic, competitive equity, and the Commission’s administrative requirements lead inexorably to the conclusion that current FCC regulations require that Lifeline discounts be applied only to an ETC’s lowest-priced generally available residential rate plan, whether such plan is offered pursuant to tariff or to contract. Sprint Spectrum accordingly urges the FCC to grant its petition for declaratory ruling.

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<sup>20</sup> See Section 54.702(c) of the FCC’s Rules.

Respectfully submitted,

SPRINT SPECTRUM, L.P.

A handwritten signature in cursive script, appearing to read "Norina Moy", written over a horizontal line.

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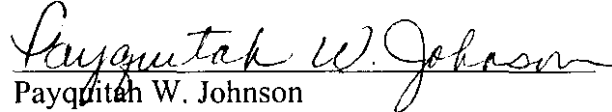
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August 24, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Nextel Corporation was delivered by electronic mail, or First Class, postage prepaid, U.S. Mail on this 24th day of August 2007 to the below-listed parties.

  
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